



ENVIRONMENTAL PROTECTION AGENCY

[EPA-OAR-2023-0139; FRL-10755-01-R7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Cargill, Inc., Blair Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated February 16, 2023, granting in part and denying in part a Petition dated August 8, 2022 from Cargill, Inc. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Nebraska Department of Environment and Energy (NDEE) to Cargill, Incorporated – Blair Facility for its corn wet milling facility located in Blair, Washington County, Nebraska.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 7 Office, 11201 Renner Boulevard, Lenexa, Kansas 66219. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

FOR FURTHER INFORMATION CONTACT: Ward Burns, EPA Region 7, telephone number: (913) 551-7960, email address: burns.ward@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under

title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

The EPA received the Petition from Adam M. Kushner, Partner, Hogan Lovells US, LLP, on behalf of Cargill, Incorporated dated August 8, 2022, requesting that the EPA object to the issuance of operating permit no. OP96S1-001, issued by NDEE to Cargill, Incorporated – Blair Facility in Blair, Washington County, Nebraska. The Petition alleged that:

Claim A: The Permit is not in compliance with the CAA because NDEE exceeds its authority under the CAA and with 40 CFR part 70 in imposing new scrubber liquid temperature control and monitoring requirements that are not necessary to assure compliance;

Claim B: The permit is not in compliance with title V because NDEE exceeds its authority under the CAA and part 70 in imposing new substantive requirements in the form of scrubber liquid temperature control requirements, and NDEE's decision to do so is arbitrary and capricious and unsupported in the record;

Claim C: The permit is not in compliance with the title V because NDEE exceeds its authority under the CAA in imposing new substantive requirements in the form of "alternative" VOC/HAPs inlet testing and compliance demonstration requirements, and NDEE's decision to do so is arbitrary and capricious and unsupported in the record;

Claim D: NDEE's rationales for imposing additional requirements despite the terms agreed-upon in the consent decree are arbitrary and capricious and lack support in the record;

Claim E: NDEE fails to identify sources of authority that would justify the imposition of new substantive requirements and NDEE does not satisfy the threshold requirement for imposing

supplemental monitoring requirements;

Claim F: NDEE improperly seeks to use the title V permitting process to circumvent rulemaking requirements;

Claim G: NDEE improperly relies on ‘guidance’ that is procedurally and substantively flawed;

Claim H: NDEE’s procedure for issuing the permit was flawed because NDEE fails to respond to all significant comments and thus did not comply with title V or its regulations;

Claim I: Errata: NDEE’s inconsistent language regarding Compliance Assurance Monitoring (“CAM”) plans creates regulatory uncertainty;

Claim J: EPA’s review of the permit in response to the Petition is . . . Distinct From its Prior Review During the Comment Period.

On February 16, 2023, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for the EPA’s decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Dated: March 9, 2023.

Meghan A. McCollister,
Regional Administrator,
Region 7.

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